



underberg & kessler LLP

STEVEN G. CARLING
(585) 258-2804
scarling@underbergkessler.com

May 21, 2012

Hon. William M. Skretny
United States District Judge
United States District Court
Western District of New York
68 Court Street
Buffalo, New York 14202

Re: Javier H. et al v. Maria Garcia Botello, et al.
Civ. Act. No.: 02-cv-0523(S)(Sr)

Dear Judge Skretny:

I write on behalf of Anthony J. Piedimonte, Broadwell Farms, Root Brothers Farms, Vendetti Farms, Bruce Kirby, David Piedimonte, Rodney Winkstern, Frances and Diane Domoy, Stephen Howard, James Kirby, Phillip Vigneri, Ronald E. Weiler, d/b/a Ronclar Farms, John J. Kasmer Farm, LLC, and John J. Kasmer, LLC ("the Grower Defendants") and the Named Plaintiffs to update the Court on the status of the settlement in the above captioned lawsuit.

After a successful mediation the Grower Defendants and the Named Plaintiffs agreed to a settlement consisting of a lump sum payment of attorneys' fees to Plaintiffs' attorneys and a payment to each Named Plaintiff who filed a claim form by March 16, 2012 agreeing to sign a settlement agreement and release. In accordance with the agreement, Plaintiffs' attorneys solicited and obtained claim forms from eleven (11) of the twelve (12) Named Plaintiffs in the lawsuit. Plaintiffs' attorneys provided these claim forms to the Grower Defendants with proof of submission by the close of the claim period.

After the close of the claim period, Plaintiffs' attorneys informed the Grower Defendants that they had learned that one Named Plaintiff, Sergio Roslaes Cuello, had died in 2007 and Plaintiffs' attorneys were not made aware of this until March 2012. The Plaintiffs' attorneys said that they could not agree to dismiss any claims of Mr. Rosales Cuello because they did not represent the estate and no one had substituted an administrator in this action.



After extensive discussions, the parties agreed that the Grower Defendants would file a Suggestion of Death with the Court and begin the 90-day time period for an appropriate person to file a motion to substitute for Mr. Rosales Cuello or to have the time period lapse so that Mr. Rosales Cuello's claims could be dismissed by the Court. Defendant Vigneri & Sons filed the Suggestion of Death on April 27, 2012, reserving the Gower Defendants' rights to object to any motion to substitute or to any claim made by the estate, should one be made.

The parties further agreed that they could not finalize the settlement and dismiss all remaining claims until such time as the matter of representation of Mr. Rosales Cuello is resolved or his claims are dismissed by the Court. Therefore, the parties respectfully request that the Court adjourn all deadlines in this case for 90 days to allow the parties to resolve the issue of Mr. Rosales Cuello's representation.

Thank you for your consideration.

Sincerely,

s/Steven G. Carling

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2012, I electronically filed the foregoing Joint Status Report with the Clerk of the United State District Court for the Western District of New York, using the CM/ECF system, which, upon information and belief, sent such filing to the counsel of record:

Angela Vicari, Esq.
David Irving, Esq.
Milan Bhatt, Esq.
Robert C. Weissflach, Esq.
Monte Lake, Esq.
Sean Dennis Hill
John J. Lavin

s/Steven G. Carling